

May 2, 2013

Mike Horowitz
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Cal/OSHA Research and Standards Unit
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MHorowitz@dir.ca.gov
cc: Steve Smith <Ssmith@dir.ca.gov>

Re: Cal/OSHA's adoption of the Globally Harmonized System for Hazard Communication

Dear Mr. Horowitz:

Californians for a Healthy and Green Economy (CHANGE) is a statewide coalition of environmental and environmental justice groups, health organizations, labor advocates, community-based groups, parent organizations, faith groups, and others who are concerned with the impacts of toxic chemicals on human, environmental, and occupational health.

We are here to provide our perspective on the proposal Cal/OSHA is drafting to the Standards Board during the current rulemaking process concerning the extent to which the Standards Board should adopt regulations amending California's Hazard Communications Standard (California HCS) in response to the amendments to the Federal Hazard Communication Standard (Federal HCS) that were adopted on March 26, 2012 by Federal OSHA to conform to parts of the Globally Harmonized System (GHS).

Generally, we urge the retention, if not expansion, of certain provisions that are more protective for workers than those adopted by Federal OSHA in 2012. However, we do not support harmonization at the expense of protection. Adopting less protective standards than what we already have in California, even if they are identical to those adopted by Federal OSHA, would represent huge steps backward for occupational safety and health in California. Federal OSH regulations, by law, set the floor or minimum for protective standards, not the ceiling or maximum limit.

Some of the changes adopted by federal OSHA are clearly less protective. Portions of the recently-adopted federal OSHA regulations that are weaker than California's should be rejected.

Asian Communities for Reproductive Justice * Bayview Hunters Point Community Advocates * Black Women for Wellness * Breast Cancer Action * Breast Cancer Fund *
California Healthy Nail Salon Collaborative * California Pan-Ethnic Health Network * Californians for Pesticide Reform * Center for Environmental Health *
Clean Water Action * Coalition for Clean Air * Commonweal * Communities for a Better Environment * East Yard Communities for Environmental Justice * Environment California * Environmental Working Group * Green Schools Initiative * Green Science Policy Institute * Healthy 880 Communities * Healthy Child, Healthy World * Healthy Children Organizing Project * Instituto de Educación Popular del Sur de California * Just Transition Alliance * Making Our Milk Safe (MOMS) * Movement Strategy Center *
Pesticide Action Network North America * Physicians for Social Responsibility - Los Angeles * Science and Environmental Health Network * Silicon Valley Toxics Coalition * United Steel Workers - Local 675 * Worksafe

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Contact: Kathryn Alcántar, CHANGE Campaign Director - changealifornia@gmail.com or 510.655.3900 x315

A. Keep source lists as set forth in sec. 5194 (d) (3) and (4).

We support retaining all the authoritative source or floor lists referred to and described in 8 CCR sec. 5194 (d) (3) and (4). We are greatly concerned that Federal OSHA has deleted important lists for classifying chemicals as health hazards, including carcinogens. Elimination of these lists would clearly weaken worker protection from the chemicals on those lists, now and in the future. They provide information and guidance to those preparing safety data sheets (SDSs) and ensure that the judgment of a company, individual, or other entity does not override that of reputable scientific organizations. It also ensures honesty and accuracy in the information provided to employers, workers and the public.

Manufacturers' reliance on lists of well-respected and authoritative bodies such as the National Toxicology Program (NTP), the International Agency for Research on Cancer (IARC), and the Proposition 65 List, leads to greater consistency and clarity in communicating the hazards of chemicals, which are important goals of harmonization. This results in less confusion for employers and workers as they try to understand the hazards of the chemicals and products they use, and the measures they should take to protect themselves.

Without commonly recognized authoritative lists, the door is open to cherry-picking the evidence and downplaying potential harm by manufacturers and others that are responsible for classifying chemicals. On the other hand, manufacturers and others that try to be more forthcoming and transparent when providing hazard information on chemical ingredients will be at a commercial disadvantage to those who choose not to take a more precautionary approach.

We also wish to note there are laws in California outside the labor context that rely on the designation by Cal/OSHA of chemicals as hazardous. This is an example where California labor law and environmental law cross reference and impact each other. For example, the California Proposition 65 list of carcinogens and reproductive toxins subject to that law includes substances identified by reference in Labor Code Section 6382(b)(1) (IARC carcinogens) and Labor Code Section 6382(d) (any substance designated hazardous under the Federal Hazard Communication Standard). See Health and Safety Code § 25349.8(a). Accordingly, if adoption of the Federal HCS results in designation of fewer substances as hazardous by Cal/OSHA, then some chemicals now on the Proposition 65 list may have to be removed from that list, which would result in fewer protections under Proposition 65 from toxic chemicals for not just workers but the general public as well.

We also recommend the following: Add the Proposition 65 List to the Director's List of Hazardous Substances to provide an authoritative source for identifying reproductive and developmental toxicants.

B. Retain the “one (positive) study” language.

We recommend the following:

- Retain the reference to “one (positive) study” in 8 CCR 5194 (c) in the definition of Health Hazard;
- Refer to “one (positive) study” for the purpose of classifying an ingredient as a health hazard for SDSs and on labels;
- Require the listing of ingredients and their health effects in section 2 of SDSs regarding health hazard identification based on “one (positive) study.”

The elimination in the Federal HCS of the “one positive study” standard to the weaker “weight of the evidence” test can only result in determinations that some chemicals found to be hazardous in at least one study nevertheless are no longer required to be identified on SDSs or labels. This would clearly be less effective at protecting workers than the current California HCS.

Furthermore, we draw Cal/OSHA’s attention to the submission by Michael Wilson to the Standards Board on March 21. Dr. Wilson rightly pointed out that the “one positive study” requirement is important to employers in a chemical company’s supply chain. Members of the BizNGO group and the American Sustainable Business Council want as much information as they can get about possible hazards in the products they purchase, so they can choose the least toxic or non-toxic ones.

We also recommend amending the division’s draft language in its blue Discussion Draft (page 2), A.0.3.5. Below is the Division’s draft language; our suggested revisions are underlined:

...Where available studies of possible health effects of a chemical are deemed by the SDS preparer to not provide sufficient weight of evidence for classification of the chemical, the SDS preparer shall nonetheless note on the safety data sheet the identity of the chemical and the health effect for that chemical for which there is at least one study conducted in accordance with established scientific principles and which report statistically significant findings regarding a potential health effect.

Unless manufacturers are required to rely and communicate this kind of information on a safety data sheet and elsewhere, workers could be exposed to a hazardous chemical without even knowing it. When it comes to protecting the health of workers, any erring should be on the side of precaution and provide more—not less—information, a principle that sits at the heart of right-to-know laws and the Hazard Communication Standard in California.

C. Do not adopt Federal OSHA's language that no testing is required when classifying chemicals.

The Federal statement in 29 CFR 1910.1200 (d)(2) and elsewhere that testing is not required in order to classify a chemical should not be adopted because it would make California's occupational safety and health regulations less effective than they are

currently. Nothing in international GHS agreement says testing cannot or should not be done. If the no-duty-to-test statement is included, it would undermine California HCS, 8 CCR 5194 (d)(2) which allows Cal/OSHA to require manufacturers and importers to determine what is in a mixture, if they do not already know. This is a requirement that should be retained. The Federal provision would unquestionably be less effective than the California provision.

D. Retain the requirement to revise labels within 3 months when a manufacturer or other entity becomes aware of information not currently reflected on a label.

Federal OSHA extended the time limit to 6 months for revising labels when manufacturers become aware of significant information not currently reflected on those labels. Since the time limit for revising SDSs continues to be 3 months, keeping a 3 month time limit for labels supports greater consistency in communications regarding occupational hazards. Additionally, we are unaware of any evidence supporting the necessity of extending the time limit.

E. Lower the concentrations levels of substances in mixtures for purposes of defining, classifying, reporting, and any other issues related to communicating about health hazards in California's Hazard Communication Standard.

Technology used to detect the presence of chemicals at very low concentration levels has advanced rapidly, producing valuable exposure data. In addition, we are learning more about the potentially harmful health effects posed by many chemicals at very low levels, particularly carcinogens, reproductive toxicants, and endocrine disruptors. To give just one example, bisphenol A, previously thought to be harmless, can have adverse impacts at the parts-per-trillion range. A threshold of 1% or even 0.1% for reporting BPA as a health hazard on SDSs would fail to be protective by several orders of magnitude.

Therefore we recommend:

- Lowering the concentration threshold for reporting to .01% for most chemical hazards;
- Lowering the concentration threshold for reporting to .001% in the case of carcinogens, reproductive toxicants, and endocrine disruptors;
- Where the evidence of harm warrants it, an even lower chemical-specific level should be set.

In closing, it is worth emphasizing that the intent of GHS has always been to not lower current protections. In effect, this encourages local jurisdictions to go beyond the protections offered under GHS, not to see them as a "ceiling" of what is required.

We believe Cal/OSHA should advise the Standards Board to be extremely cautious about any conclusion that harmonization in and of itself could provide benefits to worker's health. Many nations that have adopted the Globally Harmonized System have

implemented much more integrated and protective variations to avoid undermining their own situations. It must be noted that the changes that Federal OSHA made to its HCS do not uniformly harmonize it with the rest of the world.

Unless California retains the its protections already in place, these Federal OSH measures will result in designation of fewer chemicals as hazardous, and less information and warnings being transmitted to workers, their employers and users of chemicals. They will result in increased harm to workers, the environment and the public. Adopting these changes would mean ignoring established, peer-reviewed scientific evidence.

Therefore, CHANGE urges Cal/OHSA and the Standards Board to strengthen the state's Hazard Communication Standard, not weaken it in the guise of conforming to the revised Federal Hazard Communication Standard. Both Cal/OSHA and the Standards Board have the right, responsibility and authority to do so.

Thank you for considering our comments and recommendations.

Yours truly,



Kathryn Alcántar
CHANGE Campaign Director